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Application Number	11/031,698
Filing Date	01-07-2005
First Named Inventor	GENE WYSE
Art Unit	3618
Examiner Name	C. BOTTORFF
Attorney Docket Number	1-16889

ENCLOSURES *(Check all that apply)*

- ☐ Fee Transmittal Form
  - ☐ Fee Attached
- ☐ Amendment/Reply
  - ☐ After Final
  - ☐ Affidavits/declaration(s)
- ☐ Extension of Time Request
- ☐ Express Abandonment Request
- ☐ Information Disclosure Statement
- ☐ Certified Copy of Priority Document(s)
- ☐ Reply to Missing Parts/ Incomplete Application
  - ☐ Reply to Missing Parts under 37 CFR 1.52 or 1.53
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Firm Name	MARSHALL & MELHORN, LLC		
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Date	SEPTEMBER 7, 2006	Reg. No.	44.766

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of: Wyse	]	Art Unit: 3618
Serial No. 11/031,698	]	Examiner: C. Bottorff
Filed: January 7, 2005	]	
For: HAND CART UNLOADING SYSTEM WITH ROTATABLE HANDLE	]	Attorney Docket: 1-16889

September 7, 2006

MAIL STOP APPEAL BRIEF – PATENTS
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

BRIEF ON APPEAL

Honorable Sir:

This brief is in furtherance of the Notice of Appeal, which was timely filed in connection with the above-captioned application on July 7, 2006, the Notice of Appeal being received in the PTO on July 10, 2006. This Brief is being filed under the provisions of 37 CFR §41.37 and its related requirements. The fees required under 37 CFR 1.17(F) are submitted herewith.

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1. Real Party in Interest

The real party in interest is Gene Wyse, dba Wyse Industrial Carts. Wyse Industrial Carts is a business fully owned by Mr. Wyse.

2. Related Appeals and Interferences

There is no known appeal or interference which will directly affect, or be directly affected by, or have a bearing on, the Board's decision in this Appeal.

3. Status of Claims

On December 14, 2005, applicant submitted a Notice of Appeal in connection with the subject application, appealing the final rejection of claims 1-12.

The status of each of the claims is as follows:

1. Claims cancelled: None;

2. Claims withdrawn from consideration but not cancelled: None;

3. Claims pending: 1-13;

4. Claims allowed: None;

5. Claims rejected: 1-13.

The claims on appeal are 1-13. A copy of the claims on file is submitted in the attached Claims Appendix.

4. Status of Amendments

No amendment was filed subsequent to the final rejection of the application by the Office Action of April 11, 2006.

5. Summary of Claimed Subject Matter

The present invention, as defined by independent claim 1, defines a method of dislodging a load from a load bearing member of a hand cart. The cart comprises a body which comprises an upright structure with a load bearing member extending from a lower portion of the upright structure, first and second wheels rotatably connected to the body, a fixed handle and a rotatable handle to assist a user in unloading the cart. The rotatable handle is rotatably connected to the upright structure of the cart and being configured to be operated by a user's hand, with the rotatable handle being located between the fixed handle and the load bearing member. The method comprises rotating the rotatably mounted handle and applying force to the rotatably mounted handle in a first direction; and applying force to the fixed handle in a second direction generally opposite said first direction to tilt the cart to dislodge the load from the load bearing member, wherein the upright structure is displaced to a non-perpendicular position relative to the ground.

Support for the invention as claimed in claim 1 can be found throughout the application, but particularly in figures 1 and 2. The upright structure, load bearing member, wheels and fixed handle can be found, for example, in paragraph [0014]. The rotatable handle can be found, for example, in paragraph [0015]. The method disclosed in claim 1 can be found, for example, in paragraphs [0017]-[0019].

Independent claims 2 and 7 focus on the method of using the present invention without focus on the structural components. Again, support for these claims can be found, at least, in paragraphs [0017]-[0019] of the present disclosure.

6. Grounds for Rejection to be Reviewed on Appeal

On April 11, 2006, the Examiner issued an Office Action in connection with the present application. This Office Action was made final. The Examiner maintained his rejection of all of the pending claims from the preceding Office Action. Namely:

a) Claims1-13 were rejected under 35 USC §103, as being unpatentable over US 3,486,651 to Gottinger in view of US 4,226,434 to Hill.

7. Arguments

Claims 1 and 12 stand or fall together and will be argued collectively herein, in particular with regard to independent claim 1. Similarly, claims 2-6 stand or fall together and will be argued collectively herein, in particular with regard to independent claim 2. Claims 7-11 and 13 stand or fall together and will be argued collectively herein, in particular with regard to independent claim 7.

a) Rejection of Claims 1-13 under 35 USC §103

Claims 1-13 were rejected under 35 USC §103. Each of the independent claims will be discussed separately below.

a1) Rejection of Claims 1 and 12 under 35 USC §103

Claims 1 and 12 were rejected under 35 USC §103 as being unpatentable over US 3,486,651 to Gottinger in view of US 4,226,434 to Hill. The Examiner indicated that Gottinger showed a method of dislodging a load from a load bearing member of a handcart. The Examiner notes that the rotatable handle is rotatably connected to the upright structure of the cart and is configured to be operated by the user's hand.

Gottinger shows a hand cart comprising a frame with a horizontally extending platform and wheels. The frame has a handle portion (17) and a "U-shaped" handle 20. Figure 3 shows that in order to remove the load from the load bearing member, the U-shaped handle is pivoted away from the body of the cart which causes rollers 30 to engage with and press the load away from the cart.

The secondary reference applied by the Examiner, Hill, shows a hand truck which includes a frame having spaced apart handles at the upper end adapted for engagement by the hands of the operator whereby the frame of the truck may be pivoted forward and backward to load or unload objects, and for movement of the truck about the floor surface. The cart has a toe plate which is affixed to the lower end of the frame and extends generally normal of the frame forward surface. The toe plate is configured and adapted to slide under objects to be lifted and moved. The pivot junction provides non-sliding engagement with the floor surface when the frame is pivoted rearwardly. Affixed to the rearward surface of the frame are support brackets which extend rearwardly to move the toe plate relative to the floor a preselected angle. Further rearward movement of the upper end of the frame after the support brackets engage the wheel axle lifts the pivot junction off the floor and transfers the load on the truck to the wheels whereby the load may be moved about.

The only reference to unloading the load from the cart in the Hill reference is found in the summary of the invention, wherein it is noted that "the truck includes a frame having spaced apart handles at the upper end adapted for engagement by the hands of the operator whereby the frame of the truck may be pivoted forward and backward to load or unload objects". (column 2, lines 10-15).

The present invention, as claimed in claim 1, clearly defines the steps of rotating the rotatably mounted handle and applying force to the rotatably mounted handle in a first direction and applying force to the fixed handle in a second direction generally opposite said first direction to tilt the cart to dislodge the load from the load bearing

member, wherein the upright structure is displaced to a non-perpendicular position relative to the ground. The Gottinger structure clearly uses the rollers 30 to push the load off of the load bearing member, specifically so that the handle of the cart is not displaced from perpendicular to the ground to displace the load. The present invention, as claimed in claim 1, simply uses a pivot point between the two handles (the fixed and rotatable handles) to cause the upright structure to pivot relative to the ground. Gravity then assists the user in removing the load from the load bearing member. The structure is very mechanically simple and can last a significant period of time before failure, leading to a reliable and long-lived hand cart. The method of Gottinger (as necessitated by the structure of Gottinger) relies on the user to use the mechanical lever and rollers to push the load off of the cart. The user is not assisted by gravity as he is in the present invention as defined by claim 1. Thus the method of Gottinger does not show the method claimed in claim 1.

Applicant does not agree with the Examiner that the method of Hill overcomes this deficiency of the Gottinger patent. As noted above, the only reference to unloading the cart in the Hill reference is the indication in the summary that the cart may be pivoted forwards or backwards to unload the cart. There is no indication in Hill to use a second handle to provide mechanical assistance to pivot the cart, nor would one skilled in the art look beyond the Gottinger reference to unload the cart, when the Gottinger reference already includes means (the rollers) and a method of using them to unload the cart.

It is therefore submitted that no reasonable combination of the Hill and Gottinger references discloses the invention as claimed in claim 1. It is therefore believed that claim 1, and the claim dependent therefrom, are allowable. Reversal of the rejection thereagainst is therefore respectfully requested.

A2) Rejection of Claims 2-6 under 35 USC §103

Claim 2 is very similar to claim 1 only containing fewer structural elements and an indication that a portion of the load bearing member loses contact with the ground. Claim 2 defines a method of dislodging a load from a hand cart. The method comprises rotating a handle rotatably mounted to the hand cart in a first direction generally toward the user of the hand cart; and applying force to a second portion of the hand cart in a direction generally opposed to the first direction in order to rotate the hand cart and to pull a load bearing member of the hand cart away from the load, thus dislodging the load from the hand cart, and wherein at least a portion of the load bearing member loses contact with the ground.

The prior art is the same as that applied against claim 1 above. It is respectfully submitted that nothing in Gottinger suggests that any part of the load bearing member loses contact with the ground. In fact, the pushing roller assembly of Gottinger would preclude that from happening. The Hill reference does show the load bearing member separating from the ground. However, there is nothing in either the Hill or Gottinger reference to suggest there combination. Further, there would be no reason to modify the Gottinger reference as suggested, since the Gottinger reference clearly utilizes the pushing rollers to remove the load from the load bearing member. There would be

nothing in the Gottinger or Hill references to suggest using the rotatable handle of Gottinger to rotate the upright structure of the hand cart so that a portion of the load bearing member loses contact with the ground as occurs in the Hill reference. Again, the present invention discloses a method using simple well known mechanical principles in a manner that has not been previously suggested. As both of the applied references have been available and known for a significant period of time (greater than 25 years) it is submitted that any *obvious* combination that would yield the present invention would have been known previously.

It is therefore submitted that no reasonable combination of the Hill and Gottinger references discloses the invention as claimed in claim 2. It is therefore believed that claim 2, and the claims dependent therefrom, are allowable. Reversal of the rejection thereagainst is therefore respectfully requested.

A3) Rejection of Claims 7-11 and 13 under 35 USC §103

Claim 7 is very similar to claim 2. Claim 7 defines a method of dislodging a load from a hand cart, the hand cart comprising an upright structure and a load bearing member substantially perpendicular to the upright structure. The method comprises applying force to a handle rotatably mounted to the upright structure in a first direction generally toward the user of the hand cart, and applying force to a second portion of the hand cart in a direction generally opposed to the first direction in order to rotate the upright structure of the hand cart to a substantially non-perpendicular position with respect to the ground, and to pull the load bearing member of the hand cart away from the load, thus dislodging the load from the hand cart.

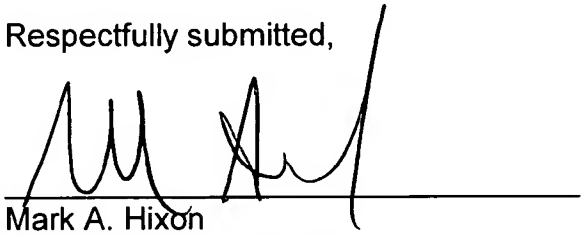
The prior art is the same as that applied against claims 1 and 2 above. It is respectfully submitted that nothing in Gottinger suggests rotating the upright structure away from perpendicular to the ground. In fact, the pushing roller assembly of Gottinger is used as an alternative, making such rotation unnecessary. The Hill reference does suggest rotation of the upright structure, however uses a single handle to do so. However, there is nothing in either the Hill or Gottinger reference to suggest there combination. Further, there would be no reason to modify the Gottinger reference as suggested, since the Gottinger reference clearly utilizes the pushing rollers to remove the load from the load bearing member, thus preventing any suggestion to rotate the upright structure away from parallel. There would be nothing in the Gottinger or Hill references to suggest using the rotatable handle of Gottinger to rotate the upright structure of the hand cart so that a portion of the load bearing member loses contact with the ground as occurs in the Hill reference. Again, the present invention discloses a method using simple well known mechanical principles in a manner that has not been previously suggested. As both of the applied references have been available and known for a significant period of time (greater than 25 years) it is submitted that any *obvious* combination that would yield the present invention would have been known previously.

It is therefore submitted that no reasonable combination of the Hill and Gottinger references discloses the invention as claimed in claim 7. It is therefore believed that claim 2, and the claims dependent therefrom, are allowable. Reversal of the rejection thereagainst is therefore respectfully requested.

CONCLUSION

It is therefore respectfully submitted that the claims are allowable over the applied art of record. As claims 1, 2 and 7 are patentable for the reasons discussed, and as claims 3-6 and 8-13 depend directly or indirectly from these independent claims, applicant submits claims 3-6 and 8-13 are likewise patentable. An expeditious determination by the Board to that effect is respectfully requested.

Respectfully submitted,



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CLAIMS APPENDIX

1. A method of dislodging a load from a load bearing member of a hand cart, wherein the cart comprises a body which comprises an upright structure with a load bearing member extending from a lower portion of the upright structure, first and second wheels rotatably connected to the body, a fixed handle and a rotatable handle to assist a user in unloading the cart, the rotatable handle being rotatably connected to the upright structure of the cart and being configured to be operated by a user's hand, the rotatable handle being located between the fixed handle and the load bearing member, the method comprising:

rotating the rotatably mounted handle and applying force to the rotatably mounted handle in a first direction; and

applying force to the fixed handle in a second direction generally opposite said first direction to tilt the cart to dislodge the load from the load bearing member, wherein the upright structure is displaced to a non-perpendicular position relative to the ground.

2. A method of dislodging a load from a hand cart comprising:

rotating a handle rotatably mounted to the hand cart in a first direction generally toward the user of the hand cart; and

applying force to a second portion of the hand cart in a direction generally opposed to the first direction in order to rotate the hand cart and to pull a load bearing member of the hand cart away from the load, thus dislodging the load from the hand cart, and wherein at least a portion of the load bearing member loses contact with the ground.

3. The method according to claim 2 wherein the second portion of the hand cart is above the rotatable handle.

4. The method according to claim 2 wherein the hand cart comprises wheels which are lifted from the ground while dislodging the load.

5. The method according to claim 2 wherein at least a portion of the load bearing member remains in contact with the ground while the load is being dislodged.

6. The method according to claim 2 wherein the hand cart has a top portion and a bottom portion, and the top portion of the cart is rotated substantially towards the load and the bottom portion of the cart is rotated substantially away from the load to dislodge the load from the hand cart.

7. A method of dislodging a load from a hand cart, the hand cart comprising an upright structure and a load bearing member substantially perpendicular to the upright structure, comprising:

applying force to a handle rotatably mounted to the upright structure in a first direction generally toward the user of the hand cart; and

applying force to a second portion of the hand cart in a direction generally opposed to the first direction in order to rotate the upright structure of the hand cart to a substantially non-perpendicular position with respect to the ground, and to pull the load

bearing member of the hand cart away from the load, thus dislodging the load from the hand cart.

8. The method according to claim 7 wherein the second portion of the hand cart is above the rotatable handle.

9. The method according to claim 7 wherein the hand cart comprises wheels which are lifted from the ground while dislodging the load.

10. The method according to claim 7 wherein at least a portion of the load bearing member remains in contact with the ground while the load is being dislodged.

11. The method according to claim 7 wherein the hand cart has a top portion and a bottom portion, and the top portion of the cart is rotated substantially towards the load and the bottom portion of the cart is rotated substantially away from the load to dislodge the load from the hand cart.

12. The method according to claim 1, wherein at least a portion of the load bearing member loses contact with the ground upon the force being applied to the fixed handle and the rotating handle being rotated.

13. The method according to claim 7, wherein at least a portion of the load bearing member loses contact with the ground upon force being applied to the rotatably mounted handle and force being applied to the second portion of the hand cart.

EVIDENCE APPENDIX

None

RELATED PROCEEDINGS APPENDIX

none